

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Mario Brown, #301990,)	C/A NO. 2:10-1025-CMC-BHH
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Capt. NFN Miller; Capt. NFN Tinch;)	
Lt. NFN Lasley; Officer NFN Sewell;)	
Nurse NFN Ryan; Lt. Hunter,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation ("Report"). On February 17, 2011, the Magistrate Judge issued a Report recommending that this matter be dismissed with prejudice due to Plaintiff's failure to prosecute this action. On February 24, 2011, Plaintiff filed a motion for appointment of counsel, and on March 1, 2011, this court received Plaintiff's objections to the Report. On March 7, 2011, this court gave Plaintiff the additional opportunity to respond to Defendants' summary judgment motion. On March 22, 2011, Plaintiff responded to Defendants' summary judgment motion, seeking that this matter be dismissed without prejudice "to file again once his administrative remedies [have] been exhausted." Resp. at 1 (Dkt. #58, filed Mar. 22, 2011).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

See Mathews v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's motion and objections, the court declines to adopt the Report of the Magistrate Judge.

Defendants' motion for summary judgment is **granted** and this matter is dismissed without prejudice for failure to exhaust administrative remedies. *See Bryant v. Rich*, 530 F.3d 1368, 1375 n.11 (11th Cir. 2008) (noting that district court's dismissal without prejudice on summary judgment motion proper where "neither party has evidenced that administrative remedies at [the correctional facility] are absolutely time barred or otherwise clearly infeasible.").

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
May 2, 2011